BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

SHARON K. BARNUM Claimant	}
VS.	Docket No. 202,708
CARPET FACTORY OUTLET	DOCKET NO. 202,700
Respondent AND	
GRANITE STATE INSURANCE COMPANY Insurance Carrier	}

ORDER

Claimant appeals from a Preliminary Hearing Order entered by Administrative Law Judge John D. Clark on September 14, 1995.

<u>Issues</u>

The sole issue to be determined is whether claimant gave notice of injury within ten (10) days or established just cause for failure to do so as required by K.S.A. 44-520.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments of the parties, the Appeals Board finds that the claimant has failed to establish either that she gave notice within ten (10) days, or just cause for the failure to give notice. Claimant has also not established that respondent had actual knowledge of the injury and, accordingly, the decision by the Administrative Law Judge denying the application for preliminary benefits should be affirmed.

Claimant has alleged and testified that she suffered accidental injury arising out of and in the course of her employment on December 27, 1994. She testified that the injury occurred when she was attempting to retrieve a small sample off a carpet roll. She twisted and injured her low back. Claimant acknowledges she did not recall notifying her employer of the injury until sometime in February 1995. She gives no explanation for the delay.

Claimant asserts that respondent had actual knowledge. In support of the argument, claimant's counsel cites testimony of Matthew Hair, one of claimant's coworkers. Mr. Hair's testimony does not, however, establish that respondent had actual knowledge of the injury. In fact, Mr. Hair testifies that he had a conversation with claimant on December 26, 1994 because he noticed claimant was walking in a "hunched-over" manner. This co-worker states that claimant told him she had injured her back on December 24, lifting a recliner. In claimant's direct testimony she testified that she lifted

a recliner. The recliner was a Christmas present for her son. She acknowledged that the lifting of the recliner was not part of her employment duties.

After describing this conversation with claimant, Mr. Hair then states he had a conversation with Bernie Burghart, the manager, approximately a week after January 27. Mr. Burghart had approached him about his conversation with the claimant. In addition to being uncertain about when Mr. Burghart approached him about his conversation with claimant, Mr. Hair does not describe his conversation with the manager. From the other testimony presented, it appears that if Mr. Hair had accurately described his conversation with claimant, it still would not have been notice of an accidental injury arising out of and in the course of claimant's employment. It would have conveyed information about an injury of lifting a recliner for a personal purpose. The evidence does not, therefore, establish that respondent had actual knowledge of claimant's alleged work-related injury.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge John D. Clark dated September 14, 1995, should be, and the same is hereby, affirmed.

II IO OO ONDERED.
Dated this day of November 1995.
BOARD MEMBER
BOARD MEMBER
BOARD MEMBER

c: Randy S. Stalcup, Wichita, Kansas James McVay, Great Bend, Kansas John D. Clark, Administrative Law Judge Philip S. Harness, Director

IT IS SO ORDERED